

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5355 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HR PATEL

Versus

INDIAN OIL CORPORATION LTD.,

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Appearance:

MR JITENDRA M PATEL for Petitioner

None present for the Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/07/96

ORAL JUDGEMENT

1. The petitioner during the pendency of this Sp. Civil Application has expired on 13-6-1994 leaving behind surviving his legal heirs, Ramilaben Harishbhai Patel, Falguniben Harishbhai Patel, Hiteshbhai Harishbhai Patel and Sachinkumar Hiteshbhai Patel. An application for bringing on record the legal heirs of the petitioner has been filed in the month of June, 1994. The application is allowed and the aforesaid four legal heirs of the

deceased petitioner, Harishbhai Ranchhodbhai Patel are brought on record. The office is directed to make necessary correction in the record forthwith.

2. Heard learned counsel for the petitioners. The deceased petitioner Harishbhai Ranchhodbhai Patel was appointed in Gujarat refinery as a Loder-Fider. He was chargesheeted on 17-9-1980 of serious charges of committing theft and dishonesty with the company's property. The petitioner has committed theft of petrol. Inquiry had been conducted and charges against the petitioner were found to be true. The petitioner was ordered to be dismissed from services. He filed an appeal against the order of dismissal. The appeal has also been dismissed. The petitioner earlier filed Sp. Civil Application No.268 of 1982 before this Court and that Sp. Civil Application has been decided on 18th March, 1982.

3. I have gone through the order of this court made in the earlier petition and I find that, that Sp. Civil Application has been accepted on the ground that the appellate authority while deciding the appeal filed by the petitioner against the order of dismissing him from services did not consider the question whether the penalty imposed was adequate and reasonable. After the remand appellate authority has considered the matter, under the order dated 20th June, 1982 the appeal has been dismissed. The learned counsel for the petitioner raises only contention that the penalty of the dismissal of the petitioner from the services is highly excessive and inadequate. In the cases of the persons committing the theft of petrol, the respondent-Corporation has taken a lenient view. He has passed over a statement of about 16 employees of the Corporation and contended that the petitioner since deceased should have been given the same treatment.

4. It has next been contended that the heirs of the deceased employee has already sent a letter through their advocate to the counsel for the corporation and prayed that one of the dependent may be given employment, and in case, it is done, then the petitioners will not press this Special Civil Application unconditionally. A list of the persons who have been taken back in the services after committing theft of the petrol has been sent alongwith this letter. The learned counsel for the petitioner has contended that this Court may give the directions to the respondent to give an employment to one of the legal heirs of the deceased petitioner. I do not find any substance in any of the contentions raised by

the learned counsel for the petitioner. The theft of petrol from the refinery by an employee is a serious misconduct and on proof of the same the minimum punishment should be the dismissal. An employee working in the refinery, if commits theft then it is a very serious thing and should be dealt with severely. In case in the matter of the theft of the petrol from the refinery by an employee, a lenient view is taken then it will encourage other employees to indulge in the same activity. In view of this fact, no lenient view is to be taken and rightly the appellate authority has not taken the lenient view in the matter. The submission of the learned counsel for the petitioner that in the case of 16 persons, lenient view has been taken is of no help to him. In case, in the matter of theft committed by an employee, lenient view has been taken then it was not justified. This Court will not go on the merits of this case, as the cases of those persons are not before this Court nor those persons are party before this Court. In the absence of the cases of those persons as well as those persons are party to this petition, it is not proper to go on the validity of the action taken by the Corporation in their cases. Apart from this, it is difficult to say in the absence of sufficient material on record that in what circumstances and on what grounds those persons have been taken back in the services. It is only a unilateral statement made by the petitioners without producing any documentary evidence in support thereof. It is suffice to say that in the similar cases of theft and cheating an employee having taken back by the Corporation, this Court will not give an indulgence to the petitioner on this ground. It cannot be said to be a case of discrimination in the matter of penalty to be given. The decision taken by the Corporation in the cases of those persons may not be correct. Reference in this respect may have to the decision of the Supreme Court in the case of Chandigarh Administration V. Jagjitsingh reported in AIR 1995 SC 705 and the case of this Court in the case of Bhanmati Tapubhai Muliya v. State of Gujarat & Principal Government Industrial Institute reported in 1995 (2) GLH, 228. The Supreme Court has considered the matter with reference to the plea of discrimination and held that on the basis of illegal and unwarranted orders of the authority no benefit can be given to the petitioners on the ground of discrimination. In the case of Chandigarh Administration (supra) the Supreme Court has further held that in such cases in the absence of the case of other persons, and in his absence, the Court should not go on the question of legality and correctness of the order, but the case of the petitioner is to be decided on its own facts. As

observed earlier by me in the absence of the cases of those persons, in their absence as well as in the absence of the sufficient material produced on the record, it is not advisable to go on to decide their cases. But merely because the Corporation has taken the employees who have committed theft back in service, the petitioner cannot be given same benefits. In such matters, no lenient view is to be taken and no plea of discrimination can be there.

5. The other submission that one of the legal heirs of the petitioner since deceased may be taken in the service, it is suffice to say that no such legal right accrues to the petitioners. It is not a case where the deceased petitioner died while in service, but it is a case where he has been dismissed from the service on a proved misconduct of committing theft and dishonesty. Hence, the aforesaid submission of the petitioners is of no consideration. No such right is there in favour of any of the legal heirs of the deceased petitioner. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

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